

FEB 20 2004

TC 2600

<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)		Application No.	09/767,016
		Filing Date	January 22, 2001
		First Named Inventor	Y. Brian Chen
		Art Unit	2661
		Examiner Name	FEB 19 2004
Total Number of Pages in This Submission	11	Attorney Docket Number	85710P055

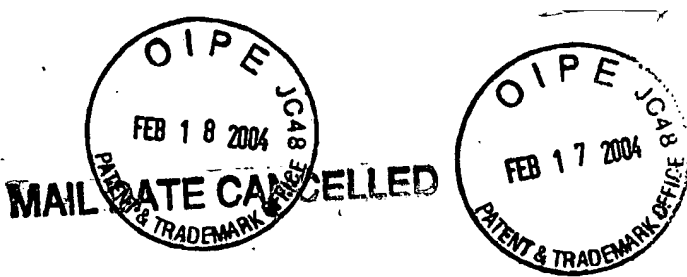
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ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form  <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment / Response  <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> PTO/SB/08  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/Incomplete Application  <input type="checkbox"/> Basic Filing Fee  <input type="checkbox"/> Declaration/POA  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> Petition to Convert a Provisional Application  <input checked="" type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance Communication to Group  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">Statement Under 37 CFR 3.73(b), true copy of assignment document (011490/0631)</div>
<div style="border: 1px solid black; padding: 5px;">Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	André L. Marais, Reg. No. 48,095 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Signature	
Date	02/13/04

CERTIFICATE OF MAILING/TRANSMISSION			
I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.			
Typed or printed name	Jennifer L. Stewart		
Signature		Date	02/13/04



Attorney's Docket No.:085710.P055

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of:

Y. Brian Chen

Application No.: 09/767,016

Filing Date: January 22, 2001

For: METHODS AND APPARATUS FOR  
MULTIMEDIA BROADBAND  
TELECOMMUNICATION

Examiner: Not Yet Assigned

Art Group: 2661

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Commissioner for Patents  
Washington, D.C. 20231

POWER OF ATTORNEY BY ASSIGNEE  
AND REVOCATION OF PREVIOUS POWERS

Tut Systems, Inc.

(Name of Assignee)

("assignee"), a California corporation having a place of  
(State of Incorporation)

business at 5964 West Los Positas Boulevard, Pleasanton, CA 94588,  
(Address)

hereby states that to the best of assignee's knowledge and belief it is the assignee of the entire right, title, and interest in and to the above-referenced patent application and represents that the undersigned is a representative authorized and empowered to sign on behalf of the assignee.

Upon information and belief, the assignment document that evidences the placement of title in the assignment is filed herewith. Pursuant to 37 C.F.R. §§ 1.36 and 3.71, the assignee hereby revokes all powers of attorney previously given and appoints Ramin Aghevli, Reg. No. 43,462; William E. Alford, Reg. No. 37,764; Farzad E. Amini, Reg. No. 42,261; William Thomas Babbitt, Reg. No. 39,591; Jordan Michael Becker,

Reg. No. 39,602; Michael A. Bernadickou, Reg. No. 35,934; Roger W. Blakely, Jr., Reg. No. 25,831; R. Alan Burnett, Reg. No. 46,149; Gregory D. Caldwell, Reg. No. 39,926; Jae-Hee Choi, Reg. No. 45,288; Thomas M. Coester, Reg. No. 39,637; Robert P. Cogan, Reg. No. 25,049; Donna Jo Coningsby, Reg. No. 41,684; Florin Corie, Reg. No. 46,244; Mimi Diemmy Dao, Reg. No. 45,628; Dennis M. deGuzman, Reg. No. 41,702; Stephen M. De Klerk, Reg. No. 46,503; Michael Anthony DeSanctis, Reg. No. 39,957; Daniel M. De Vos, Reg. No. 37,813; Justin M. Dillon, Reg. No. 42,486; Sanjeet Dutta, Reg. No. 46,145; Matthew C. Fagan, Reg. No. 37,542; Tarek N. Fahmi, Reg. No. 41,402; Thomas S. Ferrill, Reg. No. 42,532; George Fountain, Reg. No. 37,374; Andre Gibbs, Reg. No. 47,593; James Y. Go, Reg. No. 40,621; Melissa A. Haapala, Reg. No. 47,622; Alan Heimlich, Reg. No. 48,808; James A. Henry, Reg. No. 41,064; Libby H. Ho, Reg. No. 46,774; Willmore F. Holbrow III, Reg. No. 41,845; Sheryl Sue Holloway, Reg. No. 37,850; George W. Hoover II, Reg. No. 32,992; Eric S. Hyman, Reg. No. 30,139; William W. Kidd, Reg. No. 31,772; Walter T. Kim, Reg. No. 42,731; Eric T. King, Reg. No. 44,188; Steve Laut, Reg. No. 47,736; George Brian Leavell, Reg. No. 45,436; Samuel S. Lee, Reg. No. 42,791; Gordon R. Lindeen III, Reg. No. 33,192; Jan Carol Little, Reg. No. 41,181; Julio Loza, Reg. No. 47,758; Joseph Lutz, Reg. No. 43,765; Michael J. Mallie, Reg. No. 36,591; Andre L. Marais, Reg. No. 48,095; Paul A. Mendonsa, Reg. No. 42,879; Clive D. Menezes, Reg. No. 45,493; Richard A. Nakashima, Reg. No. 42,023; Stephen Neal, Reg. No. 47,815; Chun M. Ng, Reg. No. 36,878; Thien T. Nguyen, Reg. No. 43,835; Thinh V. Nguyen, Reg. No. 42,034; Robert B. O'Rourke, Reg. No. 46,972; Daniel E. Ovanezian, Reg. No. 41,236; Gregg A. Peacock, Reg. No. 45,001; Marina Portnova, Reg. No. 45,750; Michael A. Proksch, Reg. No. 43,021; Randol W. Read, Reg. No. 43,876; William F. Ryann, Reg. No. 44,313; James H. Salter, Reg. No. 35,668; William W. Schaal, Reg. No. 39,018; James C. Scheller, Reg. No. 31,195; Jeffrey S. Schubert, Reg. No. 43,098; Saina Shamilov, Reg. No. 48,266; Maria McCormack Sobrino, Reg. No. 31,639; Stanley W. Sokoloff, Reg. No. 25,128; Judith A. Szepesi, Reg. No. 39,393; Ronald S. Tamura, Reg. No. 43,179; Edwin H. Taylor, Reg. No. 25,129; Lance A. Termes, Reg. No. 43,184;

David N. Tran, Reg. No. 50,804; John F. Travis, Reg. No. 43,203; Kerry P. Tweet, Reg. No. 45,959; Mark C. Van Ness, Reg. No. 39,865; Tom Van Zandt, Reg. No. 43,219; Brent Vecchia, Reg. No. 48,011; Lester J. Vincent, Reg. No. 31,460; Archana B. Vittal, Reg. No. 45,182; Glenn E. Von Tersch, Reg. No. 41,364; John Patrick Ward, Reg. No. 40,216; Mark L. Watson, Reg. No. 46,322; Thomas C. Webster, Reg. No. 46,154; and Norman Zafman, Reg. No. 26,250; my patent attorneys, and Charles P. Landrum, Reg. No. 46,855; Suk S. Lee, Reg. No. 47,745; and Raul Martinez, Reg. No. 46,904, Brent E. Vecchia, Reg. No. 48,011; Lehua Wang, Reg. No. P48,023; my patent agents, of BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP, with offices located at 12400 Wilshire Boulevard, 7th Floor, Los Angeles, California 90025, telephone (310) 207-3800, and James R. Thein, Reg. No. 31,710, my patent attorney with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Pursuant to 37 C.F.R. § 3.71, the assignee hereby states that prosecution of the above-referenced patent application is to be conducted to the exclusion of the inventor(s).

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Send all future correspondence to André L. Marais,  
Reg. No. 48,095, Blakely, Sokoloff, Taylor, & Zafman LLP,  
12400 Wilshire Boulevard, Seventh Floor, Los Angeles, California 90025, and direct all  
telephone calls to the same at (408) 947-8200.

Assignee of Interest: Tut Systems, Inc.  
(Type or Print)

Dated: 4-2-02 By: Marilyn Lobel

Name: Marilyn Lobel  
(Type or Print)

Title: Vice President/Controller  
(Type or Print)

Address of Assignee of Interest:  
Tut Systems, Inc.  
5964 West Las Positas Boulevard  
Pleasanton, CA 94588

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 02/13/04 By: [Signature]

Name: André L. Marais  
(Type)

Reg. No.: 48,095

12400 Wilshire Blvd.  
Seventh Floor  
Los Angeles, California 90025-1026  
(408) 947-8200



Docket No. 85710P055

**STATEMENT UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: Tut Systems, Inc.Application No./Patent No.: 09/767,016 Filing/Issue Date: 1/22/2001Entitled: Methods and Apparatus for Multimedia Broadband TelecommunicationTut Systems, Inc., a Corporation

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

of Delaware,

states that it is:

1. ☒ the assignee of the entire right, title and interest; or  
2. ☐ an assignee of less than the entire right, title and interest.  
The extent (by percentage) of its ownership interest is \_\_\_\_\_ %  
in the patent application/patent identified above by virtue of either:

- A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the Patent and Trademark Office at Reel , Frame , or for which a copy thereof is attached.

OR

- B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: inventor To: ViaGate Technologies, Inc.

The document was recorded in the Patent and Trademark Office at  
Reel 011490, Frame 0631, or for which a copy thereof is attached.

2. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

3. From: \_\_\_\_\_ To: \_\_\_\_\_

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Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

4. From: \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☒ Copies of assignments or other documents in the chain of title are attached.

**[NOTE]:** A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the PTO. See MPEP 302-302.8]

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of assignee.

02/13/04  
Date

[Signature]  
Signature

André L. Marais, Reg. No. 48,095

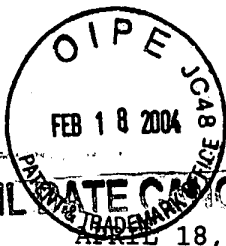
Typed or printed name

\_\_\_\_\_  
Title

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DAVID P. GORDON  
65 WOODS END ROAD  
STAMFORD, CT 06905

PTAS



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UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

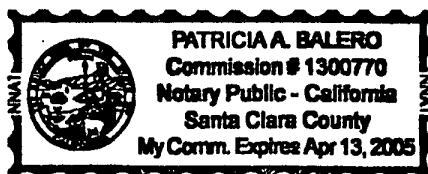
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State of California ) ss.  
County of Santa Clara )

Under section 4307 of the California Probate Code on this 10<sup>th</sup> day of February, 2004, I, the undersigned Notary Public, hereby certify that the attached document is a true, complete and unaltered photocopy of the Notice of Recordation of Assignment Document presented to me by Jennifer Stewart.



(seal)

  
Notary's Signature

02-08-2001

RECOR

F



VIA-001

101607507

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of Conveying party(ies):

Y. Brian Chen

## 2. Name and address of receiving party(ies):

ViaGate Technologies, Inc.

745 Route 202/206  
Suite 101  
Bridgewater, NJ 08807

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Additional name(s) & address(es) attached? ☐ Yes ☒ No

## 3. Nature of conveyance:

☒ Assignment☐ Merger☐ Security Agreement☐ Change of Name

Execution Date: 1/17/01

## 4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: 1/17/01

A. Patent Application No.(s)

B. Patent No.(s)

09767016

## 5. Name and address of party to whom correspondence concerning document should be mailed:

David P. Gordon  
65 Woods End Road  
Stamford, CT 06905

## 6. Total number of applications and patents involved:

1

7. Total fee (37 CFR 3.41)..... \$40

☒ Enclosed☐ Authorized to charge deposit account

8. Deposit account number: 07-1732

(attach duplicate page if paying by deposit account)

## 9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

David P. Gordon

Name of Person Signing

Signature

JAN 19, 2001

Date

Total number of pages including cover sheet, attachments, and document:

3



## **ASSIGNMENT**

WHEREAS, I, **Y. Brian Chen**, hereinafter referred to as the "Inventor" a citizen of the United States whose post office address is 10 Quail Ridge Drive, Flemington, NJ 08822, have invented certain new and useful improvements in

### **METHODS AND APPARATUS FOR MULTIMEDIA BROADBAND TELECOMMUNICATION**

as described and set forth in an application for Letters Patent of the United States of America, executed by me on the 17<sup>th</sup> day of JANUARY, 2001  
(Attorney Docket No. VIA-001).

AND WHEREAS, **ViaGate Technologies, Inc.** hereinafter referred to as the "said COMPANY", a company existing under the laws of Texas and having a place of business at 745 Route 202/206, Suite 101, Bridgewater, NJ 08807, is desirous of acquiring or confirming its acquisition of the entire right, title and interest in and to said invention, inventions or improvements, and in and to said application, and in and to any and all patents, both of the United States and of all foreign countries, that may be obtained therefor;

NOW, THEREFORE TO ALL WHOM IT MAY CONCERN, BE IT KNOWN; that I, the Inventor, for good and valuable considerations, the receipt and sufficiency of which I hereby acknowledge, have sold, assigned, transferred and conveyed, and by this assignment do sell, assign, transfer and convey, unto said COMPANY, its successors and assigns, the entire right, title and interest throughout the world, in and to my invention, inventions or improvements described or set forth in said application, in any form or embodiment thereof, and in and to said application, and in and to any applications filed in any foreign country based thereon, including the right to file foreign applications under the provisions of any convention or treaty; and in and to any confirmation, divisional, continuation, continuation-in-part, or substitute application which may be filed on said invention, inventions or improvements in the United States or in any foreign country; and in and to any and all patents, certificates, utility models, reissues, extensions, additions or confirmations thereof which may be granted in the United States or in any foreign country upon said invention, inventions or improvements, TO HAVE AND TO HOLD the same to the full end of the term or terms for which any and all such United States and foreign patents and grants may be issued on said invention, inventions or improvements.

AND I do hereby authorize and request the issuing authority to issue any and all of said United States and foreign patents on said application or applications to said COMPANY, its successors and assigns, as the assignee of the entire right, title and interest in and to the same, for the sole use and benefit of said COMPANY, its successors and assigns.

AND I do hereby covenant and warrant that I have full right to convey the entire right, title and interest herein assigned free and clear of all licenses, encumbrances and liens whatsoever, and that I have not executed and will not execute any instruments in conflict herewith.

AND I, for the conditions aforesaid, do hereby covenant and agree to and with the said COMPANY, its successors and assigns, that I, my executors, administrators, or other personal representatives, shall and will do all lawful acts and things, make all rightful oaths, and make, execute, and deliver any and all other

instruments in writing, and any and all further applications, papers, powers, affidavits, assignments, disclaimers and other documents, which in the opinion of counsel for said COMPANY, its successors and assigns, may be required or necessary in this or in any foreign country more effectually to secure to and vest in said COMPANY, its successors and assigns, the entire right, title and interest in and to said invention, inventions, or improvements, application or applications, patents, rights, titles, benefits, privileges and advantages hereby sold, assigned, confirmed, transferred and conveyed.

The undersigned hereby grant(s) David P. Gordon and David S. Jacobson the power to insert on this Assignment any further identification which may be necessary in order to comply with the rules of the U.S. Patent and Trademark Office for the recordation of this document.

IN WITNESS WHEREOF, I, **Y. Brian Chen**, have hereunto set my hand and seal this 17<sup>th</sup> day of JANUARY, 2001

 (L.S.)  
Inventor

County of Morris )  
State of New Jersey ) ss:

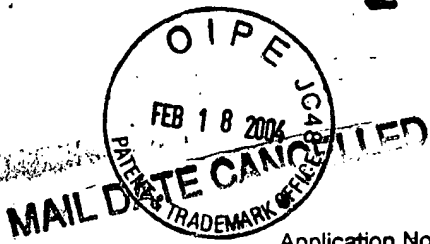
BE IT KNOWN, that on this 17<sup>th</sup> day of January, 2001 personally appeared **Y. Brian Chen** to me known and known to me to be the individual described in and who executed the foregoing assignment and he acknowledged to me that he executed the same.

  
Notary Public

SEAL

My commission expires:

MARIE JEANNE ZACCARO  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JULY 20, 2005



Application No.: 09/766,932 Filing Date: 1/22/2001

Docket #: 85710.P054

Date Mailed: 02/12/2004 Due Date(s): \_\_\_\_\_

Client: TUT SYSTEMS, INC.

Atty/Sec: ALM/JKC/jls

Title: CUSTOMER PREMISES EQUIPMENT USE IN MULTIMEDIA BROADBAND  
TELECOMMUNICATION

First Named Inventor: Y. Brian Chen

*The following has been received in the U.S.P.T.O. on the date stamped hereon:*

Assignment & Cover Sheet (30 pgs)

Certificate of Mailing

Transmittal Letter

\*\*Assignment also for 85710P055 (09/767,016) and  
85710P056 (09/767,000)\*\*

Check No. 2792 in the amount of \$120.00

Postcard

Assignee: Tut Systems, Inc.

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**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP**

**A PARTNERSHIP INCLUDING LAW CORPORATIONS**

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SAN JOSE, CA 95113-2392

(408) 947-8200

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1210(8)

February 9, 2004

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Patent & Trademark Office

  
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⑈002792⑈ ⑆121000248⑆4496878455⑈

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DETACH AND RETAIN THIS STATEMENT  
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.  
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

Invoice: 02/09/2004 Amount: 120.00  
85710P054 Tut Systems, Inc. ALM/JKC/jls  
Assignment Recordation filing fee  
Assignment also for 85710P055 (09/767,016) and 85710P056  
(09/767,000)  
From ViaGate Technologies, Inc. to Tut Systems, Inc.

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002792



**Recordation Form Cover Sheet  
PATENTS ONLY**

Attorney Docket No.: \_\_\_\_\_

To the Director of the United States Patent and Trademark Office. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Viagate Technologies, Inc.

Additional name(s) of conveying party(ies) attached?

☒ No ☐ Yes

2. Name and address of receiving party(ies):

Name: Tut Systems, Inc.

Internal Address: \_\_\_\_\_

3. Nature of Conveyance

☐ Assignment

☐ Merger

☐ Security Agreement

☐ Change of Name

☒ Other: Asset Purchase Agreement

Street Address: 5964 West Las Positas Boulevard

City: Pleasanton State/Province: CA Zip: 94588

Country: United States of America

Execution Date(s): 09/14/2001

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s) 09/766,932

B. Patent No.(s)

09/767,016, 09/767,000

Additional numbers attached? ☐ Yes ☒ No

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5. Name and address of party to whom correspondence concerning document should be mailed:

Andre L. Marais

Name: Blakely, Sokoloff, Taylor & Zafman LLP

Internal Address: \_\_\_\_\_

Street Address: 12400 Wilshire Boulevard, 7<sup>th</sup> Floor  
Los Angeles, California 90025

6. Total number of applications and patents involved: 3

7. Total Fee (37 CFR 3.41).....\$ 120.00

☒ Enclosed

☒ Authorized to be charged to deposit account

8. Deposit Account Number:

02-2666

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Andre L. Marais  
Name of Person Signing

[Signature]  
Signature

02/13/04  
Date

Total number of pages including cover sheet, attachments, and documents: 30

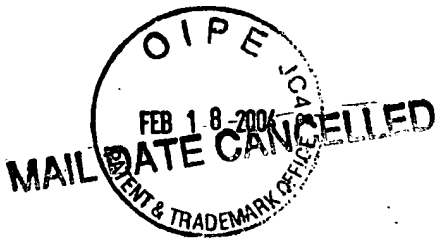
Mail documents to be recorded with required cover sheet information to:

Mail Stop Assignment Recordation Services

Director of the United States Patent and Trademark Office

P.O. Box 1450

Alexandria, Virginia 22313-1450



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ASSET PURCHASE AGREEMENT

Among

TUT SYSTEMS, INC.  
(the "Buyer"),

and

VIAGATE TECHNOLOGIES, INC.  
(the "Seller")

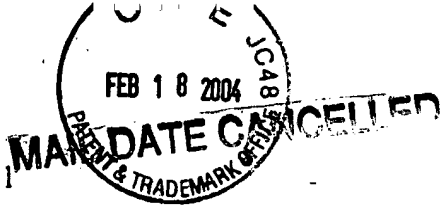
Dated as of September 14, 2001

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of the 14 day of September, 2001, by and among TUT SYSTEMS, INC. (the "Buyer"), on the one hand, and VIAGATE TECHNOLOGIES, INC. a Chapter 11 debtor in possession under Case No. 01-58902 (KCF) in the United States Bankruptcy Court for the District of New Jersey (the "Seller"), on the other hand.

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### BACKGROUND

A. The Seller filed a voluntary petition (the "Petition") for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq., as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") on July 30, 2001 (the "Filing Date"), has operated its business as a debtor-in-possession (as defined in Bankruptcy Code Section 1101) as authorized by Bankruptcy Code Sections 1107 and 1108 since the Filing Date and is preparing a liquidating plan for approval by the Bankruptcy Court.

B. The Buyer has agreed to acquire from the Seller, and the Seller has agreed to sell to the Buyer the Purchased Assets (as defined below), on the terms and subject to the conditions set forth herein.

C. The Buyer has agreed to assume from the Seller, and the Seller has agreed to assign to the Buyer, the Seller's rights and obligations under certain contracts, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises, covenants, representations and warranties contained herein, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

### ARTICLE I CERTAIN DEFINITIONS

"Affiliate" shall mean, with respect to any Person, any Person which, directly or indirectly, controls, is controlled by, or is under common control with, the specified Person and any Person that would be deemed to be an "affiliate" or an

1 "associate" of such Person, as those terms are defined in Rule 12b-2 of the General Rules  
2 and Regulations of the Securities Exchange Act of 1934, as amended.

3 "Aggrieved" shall have the meaning ascribed to it in Section 8.3.

4 "Assumed Contracts" shall have the meaning ascribed to it in  
5 Section 2.1(b).

6 "Assumed Liabilities" shall have the meaning ascribed to it in Section 2.2.

7 "Background" shall mean the Background provisions of this Agreement.

8 "Bankruptcy Code" shall have the meaning ascribed to it in the  
9 Background.

10 "Bankruptcy Court" shall have the meaning ascribed to it in the  
11 Background.

12 "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy  
13 Procedure.

14 "Benefit Plan" shall mean each compensation, stock option, employment,  
15 severance, insurance, pension or retirement plan, program or agreement that is sponsored,  
16 maintained or contributed to by the Seller for the benefit of any employee or former  
17 employee of the Seller employed in connection with the business.

18 "Buyer" shall have the meaning ascribed to it in the preamble hereto.

19 "Buyer Indemnities" shall have the meaning ascribed to it in Section 8.1.

20 "Certifications" shall mean all governmental and quasi-governmental  
21 approvals as well as the approvals, testing results and certifications of private  
22 organizations relating to the Products and/or their use.

23 "Claim" shall have the meaning ascribed to it in Section 8.3.

24 "Closing" shall have the meaning ascribed to it in Section 2.4(a).



1                    "Closing Date" shall have the meaning ascribed to it in Section 2.4(a).

2                    "COBRA" shall mean the Consolidated Omnibus Reconciliation Act of  
3                    1985.

4                    "Code" shall mean the Internal Revenue Code of 1986, as amended.

5                    "Copyrights" shall mean all registered (U.S. or foreign) or unregistered  
6                    copyrights in or related to the Products including those listed in Schedule 1 (a) hereto .

7                    "Environmental Claim" shall mean any claim, action, or written notice by  
8                    any Governmental Entity or landlord alleging liability of the Seller arising out of, based  
9                    on or resulting from (a) the presence, or release into the environment, of any Hazardous  
10                    Material or (b) circumstances forming the basis of any violation of any Environmental  
11                    Law by the Seller.

12                    "Environmental Law" shall mean all applicable federal, state and local  
13                    statutes, regulations, and orders relating to pollution, protection of the environment,  
14                    public health and safety or employee health and safety including the Comprehensive  
15                    Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601  
16                    et seq., and the Occupational Safety and Health Act, 29 U.S.C. § 654 et seq.

17                    "Equipment" shall have the meaning ascribed to it in Section 2.1(a)(iii),  
18                    (iv), (v) and (vi).

19                    "ERISA" shall mean the Employee Retirement Income Security Act of  
20                    1974, as amended.

21                    "Excluded Assets" shall have the meaning ascribed to it in Section 2.1(c).

22                    "Excluded Liabilities" shall have the meaning ascribed to it in Section 2.2.

23                    "Final Order" shall mean the order of the Bankruptcy Court pursuant to  
24                    Title 11 of the United States Code approving the sale and transfer of the Purchased  
25                    Assets and the assumption and assignment of the Assumed Contracts free and clear of all  
26                    Liens pursuant to 11 U.S.C. Sections 363 and 365.

1           "Governmental Entity" shall mean any federal, state municipal or local  
2 court, legislature, governmental agency, commission or regulatory authority or  
3 instrumentality.

4           "Hazardous Materials" shall mean any chemical, hazardous substance,  
5 pollutant, contaminant, or petroleum product regulated under any Environmental Law.

6           "Hired Employee" shall have the meaning ascribed to it in Section 6.2(h).

7           "Indemnitor" shall have the meaning ascribed to it in Section 8.3.

8           "Instruments of Assumption and Assignment" shall have the meaning  
9 ascribed to it in Section 2.4(c).

10           "Intellectual Property" shall mean: (i) all Patents, Copyrights, Trade  
11 secrets, Trademarks, Certifications and Software ; (ii) the right to retain and prosecute  
12 all Patents, Copyrights, Trade secrets, Trademarks, Certifications; (iii) the exclusive right  
13 to commercially and otherwise exploit the Products in any medium and throughout the  
14 world; and (iv) the exclusive right to continue to develop the Products and create  
15 derivative works; and (iv) the exclusive right to authorize the lawful possession or use of  
16 the Products by others by license or otherwise, anywhere in the world, in any medium,  
17 for any purpose whatsoever; and (v) the exclusive right to assert and prosecute claims for  
18 infringement or violation of the foregoing regardless of the date upon which such  
19 wrongdoing occurred.

20           "Intellectual Property Deliverables" shall have the meaning ascribed to it  
21 in Section 2.4(b) and in Schedule 2.4(b)(iv).

22           "License" means any contract between the Seller and any third party  
23 conferring upon the Seller or such third party the right to possess, use, resell or otherwise  
24 exploit Intellectual Property.

25           "Lien" shall mean any lien, security, claim, assignment, pledge, claim of  
26 ownership or charge.

27           "Losses" shall have the meaning ascribed to it in Section 8.1.

1           **"Material Adverse Effect"** shall mean any change, event or effect (or  
2 series of related changes, events or effects) which, when taken individually or together,  
3 could have a material adverse effect on the value of the Purchased Assets.

4           **"Material Taxes"** shall have the meaning ascribed to it in Section 3.14(b).

5           **"Material Tax Returns"** shall have the meaning ascribed to it in  
6 Section 3.14(a).

7           **"Non-Appealable"** shall mean, with respect to any order or judgment, an  
8 order or judgment as entered on the docket that has not been reversed, stayed, modified  
9 or amended and, as to which the time to appeal, petition for certiorari, or seek reargument  
10 or rehearing has expired and no timely appeal, petition for certiorari, or request for  
11 reargument or rehearing is pending or as to which any right to appeal, reargue, petition  
12 for certiorari, or seek rehearing has been waived in writing in a manner reasonably  
13 satisfactory to the Buyer or, if an appeal, reargument, petition for certiorari, or rehearing  
14 thereof has been denied, the time to take any further appeal or to seek certiorari or further  
15 reargument or rehearing has expired.

16           **"Patents"** shall mean all U.S. and foreign letters patent, patent  
17 applications, PCT applications, industrial design and all similar filings, including but not  
18 limited to those listed on Schedule 1 (b) hereto .

19           **"Permits"** shall have the meaning ascribed to it in Section 3.5.

20           **"Permitted Liens"** shall mean Liens to be released, and which are in fact  
21 released, prior to or at Closing.

22           **"Person"** shall mean any individual, group, corporation, partnership or  
23 other organization or entity (including without limitation any Governmental Entity).

24           **"Products"** shall mean all of the Seller's products, whether completed or in  
25 any stage of development, including Seller's multimedia access node (including the  
26 "VG4160"), customer premise equipment (including "ViaJet®") and customer and

1 network management software (including "ViaView®") and all documentation related or  
2 referring thereto.

3 "Purchase Price" shall have the meaning ascribed to it in Section 2.3.

4 "Purchased Assets" shall mean the assets identified in Section 2.1(a).

5 "Seller" shall have the meaning ascribed to it in the preamble hereto.

6 "Seller Indemnities" shall have the meaning ascribed to it in Section 8.2.

7 "Seller's Officer's Certificate" shall have the meaning ascribed to it in  
8 Section 6.2(d).

9 "Software" means computer programs (source and object code) together  
10 with all associated routines, subroutines, tools, devices, specifications and other  
11 documentation including that owned by third parties but licensed to Seller pursuant to  
12 Assumed Contracts.

13 "Tax" or "Taxes" shall mean any and all taxes, levies or other like  
14 assessments (including interest and penalties), including income, transfer, gross receipts,  
15 excise, property, sales, use, payroll and employment taxes, imposed by the United States,  
16 or any state, or local government or subdivision or agency thereof.

17 "Tax Return" shall mean any report or return filed with any federal, state  
18 or local taxing authority with respect to Taxes imposed upon or attributable to the  
19 Purchased Assets or the operations of the Seller's business.

20 "Trademarks" means all registered or unregistered trademarks,  
21 servicemarks, tradenames, Uniform Resource Locators or logos, phrases, names or  
22 devices associated with the Products, including those listed in Schedule 1 ( c ) hereof.

23 "Trade Secrets" shall mean all non-public information concerning or  
24 related to the Products, including proprietary and confidential information, know how,  
25 technology, inventions, designs, processes, and all other intangible properties and rights

1 in and to Products, whether or not in written form and whether developed by the Seller or  
2 sold, licensed or lawfully imparted to the Seller by a third party.

3 "Transactions" shall mean, collectively, (i) the purchase and sale of  
4 Purchased Assets and (ii) the other transactions contemplated by this Agreement.

5 "Transfer Taxes" shall have the meaning ascribed to it in Section 5.11.

6 "WARN Act" shall mean the federal Worker Adjustment and Retraining  
7 Notification Act.

## 8 ARTICLE II

### 9 SALE AND PURCHASE OF ASSETS

#### 10 Section 2.1 Transfer of Assets.

11 (a) On the terms and subject to the conditions of this Agreement, on  
12 the Closing Date the Seller shall sell and assign to the Buyer and the Buyer shall purchase and  
13 accept from the Seller all of the Seller's right, title and interest in the following ( the " Purchased  
14 Assets " ): (i) the Products (ii) all Intellectual Property, (iii) all finished inventory and work-in-  
15 process inventory including all inventory identified on Exhibit 1 hereto, (iv) all demonstration  
16 equipment identified on Exhibit 2 herewith, (v) all laboratory equipment, identified on Exhibit 3  
17 hereto, (vi) all office equipment identified on Exhibit 4 hereto, (vii) all infrastructure equipment  
18 identified on Exhibit 5 hereto, (viii) all Software identified Exhibit 6 hereto, without any  
19 additional cost to Seller (ix) the Assumed Contracts , (x) the non-executory contracts identified  
20 on Exhibit 7 hereto , and (xi) all claims under any insurance contracts or policies relating to any  
21 of the foregoing ( excluding premium refund claims ). The Buyer is aware that certain of the  
22 tangible Purchased Assets (the "Offsite Purchased Assets") are located at the facilities of the  
23 Seller's customers and vendors provided no such tangible Purchased Assets specifically  
24 identified in any Exhibit hereto are located at a customer or vendor site unless so stated in the  
25 applicable Exhibit. The Buyer assumes the cost of obtaining physical possession of all Offsite  
26 Purchased Assets.

27 (b) On the terms and subject to the conditions of this Agreement, the  
28 Seller shall assume and assign to the Buyer and the Buyer shall accept the assignment of and

1 assume all of the Seller's right, title and interest in those contracts and leases set forth on  
2 Schedule 2.1(b) hereto (the "Assumed Contracts"). Buyer shall have the right to designate  
3 additional contracts and leases (the "Additional Assumed Contracts") as Assumed Contracts by  
4 notice to the Seller delivered at any time on or before October 5, 2001. On or before October  
5 12, 2001, the Seller shall file a motion to assume and assign all Additional Assumed Contracts to  
6 the Buyer, provided the Buyer agrees to pay all costs to cure defaults under such Additional  
7 Assumed Contracts as required pursuant to 11 U.S.C. § 365. The Seller shall not seek to reject  
8 any executory contracts ( other than those which are the subject of the Seller's pending motion to  
9 reject ) prior to October 5, 2001 and , thereafter , shall not seek to reject any Additional Assumed  
10 Contracts unless and until the motion to assume and assign the Additional Assumed Contracts  
11 has been denied .

12 (c) The Buyer is not acquiring, and the Seller shall retain all right, title  
13 and interest in any property, assets or rights not expressly identified as Purchased Assets in  
14 Section 2.1(a) or Assumed Contracts in Section 2.1(b) (the "Excluded Assets"), including,  
15 without limitation, (i) all bank and other deposits, accounts, investments advances, collateral for  
16 letters of credit and funds, (ii) all leases and contracts not included in Assumed Contracts, (iii) all  
17 raw material inventory, and (iv) all premium refunds under insurance policies.

18 Section 2.2 Excluded Liabilities. The Buyer shall assume, and shall hold the  
19 Seller harmless and indemnify the Seller on the terms and subject to the conditions and  
20 limitations set forth in Article VIII hereof, from and against the obligations and liabilities arising  
21 under the Assumed Contracts from and after the Closing Date but not to the extent arising from  
22 any pre-Closing act or omission of Seller or its Affiliates (the "Assumed Liabilities"). The  
23 Buyer shall not assume or become responsible for, and shall be deemed not to have assumed or  
24 become responsible for, any liabilities or obligations (fixed or contingent) of the Seller  
25 (including under Benefit Plans or the benefits or funding obligations thereunder) except for the  
26 Assumed Liabilities (such excluded liabilities, the "Excluded Liabilities").

27 Section 2.3 Purchase Price. In consideration for the sale and transfer of the  
28 Purchased Assets, the Buyer shall assume the Assumed Liabilities and the Assumed Contracts  
29 and the Buyer shall pay to the Seller the sum of \$550,000.

1                   Section 2.4    Closing.

23                                   ARTICLE III

24                   REPRESENTATIONS AND WARRANTIES OF THE SELLER

25                   The Seller represents and warrants to the Buyer as follows:

26                   Section 3.1    Organization and Authority. The Seller is a corporation duly  
27 organized, validly existing and in good standing under the laws of the State of Texas. The Seller  
28 has heretofore made available to the Buyer complete and correct copies of its articles of

1 incorporation and by-laws, as currently in effect. The Seller has all requisite power and authority  
2 to carry on and conduct its business, subject to all requirements of the Bankruptcy Code , as it is  
3 now being conducted and to own or lease its properties and assets, and is duly qualified to do  
4 business and is in good standing as a foreign corporation in the State of New Jersey.

5           Section 3.2    Authority Relative to this Agreement. Subject to the entry of the  
6 Final Order, the Seller has full corporate power and authority to execute and deliver this  
7 Agreement and to consummate the Transactions. Subject to the entry of the Final Order, the  
8 Board of Directors of the Seller has approved the sale of the Purchased Assets to the Buyer and  
9 no other corporate proceedings on the part of the Seller or its Board are necessary to authorize  
10 this Agreement or to consummate the Transactions. This Agreement has been duly and validly  
11 executed and delivered by the Seller and, subject to the entry of the Final Order, constitutes, a  
12 valid and binding obligation of the Seller enforceable against the Seller in accordance with its  
13 terms.

14           Section 3.3    Consents and Approvals; No Violations. Except for the items  
15 listed on Schedule 3.3(A) and subject to the entry of the Final Order, no filing with, and no  
16 permit, authorization, consent or approval of any Governmental Entity, is necessary for the  
17 consummation by the Seller of the Transactions. Except as set forth in Schedule 3.3(B), and  
18 subject to the entry of the Final Order, neither the execution and delivery of this Agreement by  
19 the Seller nor the consummation by the Seller of the Transactions will (i) conflict with or result  
20 in any breach of any provision of the certificates (or articles) of incorporation or by-laws of the  
21 Seller, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of  
22 time or both) a default (or give rise to any right of termination, cancellation or acceleration)  
23 under, any of the terms, conditions or provisions of any note, contract, Permit, lease, or other  
24 agreement to which any of the Purchased Assets may be subject or (iii) violate any order, statute,  
25 or regulation applicable to the Seller or any of the Purchased Assets, except in the case of  
26 clauses (ii) or (iii) for violations, breaches or defaults which could not reasonably be expected to  
27 have a Material Adverse Effect.

28           Section 3.4    No Default. Except as set forth in Schedule 3.4, as of the Closing  
29 the Seller will not be in default (except for defaults of the type referred to in Section 365(b)(2) of  
30 the Bankruptcy Code) or violation (and no event will have occurred which with notice or lapse of



time would constitute a default or violation) of any term, condition or provision of (i) any Assumed Contract which would give rise to a right to terminate any such Assumed Contract, or (ii) any order, injunction or decree applicable to the Seller or the Purchased Assets.

**Section 3.5 Compliance with Applicable Law.** The Seller holds all permits, licenses, approvals and authorizations of all applicable Governmental Entities necessary for the lawful conduct of its business other than those the absence of which would not result in a Material Adverse Effect (the "Permits"). The Seller's business is being conducted in compliance with all Permits, orders, injunctions, decrees and applicable laws, rules and regulations of any Governmental Entity having jurisdiction over the Purchased Assets, except where such non-compliance would not have a Material Adverse Effect.

**Section 3.6 Labor Relations.** Except as set forth in Schedule 3.6 hereto, (i) none of the employees of the Seller is represented by any labor organization, (ii) there is no unfair labor practice charge or complaint, grievance or arbitration under any collective bargaining agreement, discrimination or equal employment opportunity charge or complaint, or other complaint or proceeding pending or, to the knowledge of the Seller, threatened by or on behalf of any employee of the Seller within the last three (3) years, (iii) within the last three (3) years, there has been no labor strike, lock-out, slowdown or stoppage nor, to the knowledge of the Seller, is any such action presently threatened against or affecting the Seller, (iv) Seller is in substantial compliance with all collective bargaining agreements to which the Seller is a party, and (v) within the last three (3) years there are no citations, investigations, administrative proceedings or formal complaints of violations of local, state or federal occupational safety and health laws pending before the occupational Safety and Health Review Commission or any federal, state or local agency or court against the Seller of which the Seller has received notice.

**Section 3.7 Employee Benefit Plans; ERISA.** Schedule 3.7 hereto sets forth a list of all Benefit Plans. Except as set forth on Schedule 3.7, each such Benefit Plan complies in form and in operation in all material respects with the applicable requirements of ERISA, the Code and other applicable laws. The Seller has not incurred any liability to the Pension Benefit Guaranty Corporation under applicable provisions of ERISA with respect to any of the Benefit Plans or any withdrawal liability under Title IV of ERISA with respect to any of the Benefit Plans that are multi-employer plans except as set forth on Schedule 3.7 or where such liability

would not cause a Material Adverse Effect. Except as set forth on Schedule 3.7, the consummation of the Transactions will not entitle any current or former employee or officer of the Seller to severance pay, unemployment compensation or any other payment from the Buyer except to the extent that unemployment or similar compensation may become payable under applicable law to any employees of the Buyer who are terminated following the Closing Date.

**Section 3.8    Material Contracts.**

(a)    Schedule 3.8(a) sets forth a true and complete list of each contract to which the Purchased Assets are subject and to which they will be subject after the Closing.

(b)    Schedule 3.8(b) contains true and complete copies of all Assumed Contracts. At the Closing, all Assumed Contracts will be in full force and effect and enforceable against each party thereto. Schedule 2.1(b) accurately states the amounts required to cure all defaults under the Assumed Contracts as required pursuant to 11 U.S.C. § 365.

**Section 3.9    Environmental Matters.**

(a)    Except as set forth in Schedule 3.9(a), to the best of its knowledge, the Seller is in compliance with applicable Environmental Laws, including the possession by the Seller of all Permits required under applicable Environmental Laws. All Permits currently held by the Seller pursuant to Environmental Laws are identified in Schedule 3.9(a).

(b)    Except as set forth in Schedule 3.9(b), there is no Environmental Claim pending or, to the Seller's knowledge, threatened against the Seller.

(c)    Except as set forth in Schedule 3.9(c), there are no judgments, orders or decrees of Governmental Entities against the Seller that relate to violations of Environmental Law.

(d)    INTENTIONALLY DELETED

(e)    Except as set forth in Schedule 3.9(e), to the best of the Seller's knowledge, no Hazardous Material has been released at, on, about or under any real property owned or leased by the Seller.

(f) Except as set forth in any schedule to this Section 3.9, to the best of the Seller's knowledge, no properties or facilities owned or leased by the Seller contain (i) any friable structural asbestos which is damaged and, in its present condition is reasonably likely to pose an unreasonable risk of harm to employees or the general public and (ii) any PCB or PCB-contaminated electrical equipment.

(g) To the best of Seller's Knowledge, there have been no environmental inspections, investigations, audits or tests conducted (i) in relation to any of the Purchased Assets or (ii) since the Seller commenced occupation, in relation to any real property owned or leased by the Seller.

Section 3.10 Title to Assets. At the Closing the Seller will have and will deliver to the Buyer, good title to all of the Purchased Assets including the Products as well as the Seller's right, title and interest in any and all Assumed Contracts.

Section 3.11 INTENTIONALLY DELETED

Section 3.12 Brokers or Finders. The Seller has not retained any agent, broker, investment banker, financial advisor or other firm or person that is or will be entitled to any brokers' or finder's fee or any other commission or similar fee in connection with any of the Transactions. The foregoing notwithstanding, prior to the filing of the Petition, the Seller retained UBS Warburg ("UBS") to explore strategic alternatives. However, the Seller has filed a motion to reject the contract between the Seller and UBS and, in any event, UBS shall not be entitled to any fee or commission which may be charged against the Buyer or any of the Purchased Assets.

Section 3.13 Litigation. Except for the Seller's pending bankruptcy proceeding described in the Background, claims filed in the Seller's pending bankruptcy proceeding and those matters set forth in Schedule 3.13 hereto, there are: (i) no actions, suits, proceedings or, to the knowledge of the Seller, investigations, relating to the Seller or the Purchased Assets, including the Products and Intellectual Property, pending or threatened; or (ii) to the knowledge of the Seller, no existing or threatened orders, injunctions, judgments or decrees outstanding against the Seller or relating to any of the Purchased Assets, including the Products and the Intellectual Property, by or before any Governmental Entity; or (iii) to the knowledge of

1 the Seller, no office actions, objections, claims of infringement or other claim to or against the  
2 Seller or relating to the Purchased Assets including the Products and the Intellectual Property;.

3                   Section 3.14   Tax Matters.

4                   (a)       All Tax Returns that the Seller was required to file (Tax Returns)  
5 have been filed. All Tax Returns were correct and complete in all material respects. Taxes  
6 shown as owed by the Seller on any Tax Return have been paid. The Seller is not the beneficiary  
7 of any extension of time within which to file any Tax Return except an extension to  
8 September 15, 2001 to file state and federal returns for the year 2000. There are no Liens (other  
9 than Permitted Liens) on any of the Purchased Assets of Seller that arose prior to the Closing  
10 Date in connection with any failure (or alleged failure) to pay any Tax.

11                   (b)       There is no dispute or claim concerning any liability for Taxes of  
12 the Seller ("Taxes") either (A) claimed or raised by any authority in writing or (B) as to which  
13 any of the directors and officers (and employees responsible for Tax matters) of the Seller has or  
14 should have knowledge based upon personal contact with any agent of such authority.

15                   (c)       The Seller has not waived any statute of limitations in respect of  
16 Taxes or agreed to any extension of time with respect to an assessment or deficiency with respect  
17 to Taxes.

18                   (d)       Neither the Buyer nor any of the Purchased Assets will be subject  
19 to any transferee, successor, or similar liability under any federal, state, local or other law, rule or  
20 regulation governing the payment of Taxes for which the Seller is, or was originally, obligated.

21                   Section 3.15   No Undisclosed Liabilities. Upon the Closing, there shall be no  
22 liabilities nor obligations of any kind (fixed or contingent) of the Seller affecting the Purchased  
23 Assets except for the Assumed Liabilities. In the event the Buyer becomes aware of any breach  
24 of this representation, the Buyer shall notify the Seller and Seller may attempt to cure such  
25 breach by seeking a modification of the Final Order provided, however, such right to cure shall  
26 not affect any rights of the Buyer hereunder, including its rights to enforce the indemnification  
27 provisions hereof.

28                   Section 3.16   INTENTIONALLY DELETED

**Section 3.17 Condition of Purchased Assets.** Except as set forth on **Schedule 3.17**, the equipment included within the Purchased Assets is in good working order, subject to normal wear and tear.

**Section 3.18 Intellectual Property and Licenses.** Except to the extent the Buyer has actual knowledge to the contrary based upon its pre closing due diligence , Seller warrants (a) all Intellectual Property is owned and lawfully used by the Seller and, subject to entry of the Final Order, no other party has rights or potential rights to such Intellectual Property; and (b) the Seller has not infringed, and by its use of its Intellectual Property, is not infringing on any patent, copyright, trade name, trademark or trade secret belonging to any other person, firm or corporation or violated any License included in the Assumed Contracts; and (c) the use of the Intellectual Property by Buyer after the Closing (including its marketing and sale of the Products consistent with the Licenses contained in the Assumed Contracts) will not conflict with, infringe upon or otherwise violate the rights of any third party; and (d) subject to entering of the Final Order, the Seller has the right to sell and assign to Buyer all of the Intellectual Property.

**Section 3.19 Schedules.** The Schedules referred to in this Article III are an integral part of the representations and warranties contained herein; provided, however, no fact, matter, circumstance or condition disclosed on any such Schedule shall be part of the Assumed Liabilities unless expressly assumed by Buyer under and pursuant to Section 2.2(a).

Section 3.20 No Omissions. Nothing contained in this Agreement or in any related document, schedule, exhibit, certificate, report, statement, or other information furnished to Buyer (or any representative thereof) in connection with the Transactions contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF THE BUYER

**The Buyer represents and warrants to the Seller as follows:**

Section 4.1 Organization. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

1                   Section 4.2    Authority Relative to this Agreement. The Buyer has full

2 corporate power and authority to execute and deliver this Agreement and to consummate the  
3 Transactions and has immediately available funds at least equal to the Purchase Price. The  
4 execution and delivery of this Agreement by the Buyer and the consummation by the Buyer of  
5 the Transactions have been duly and validly authorized by the Buyer and no other corporate  
6 proceedings on the part of the Buyer are necessary to authorize this Agreement or to  
7 consummate the Transactions. This Agreement has been duly and validly executed and  
8 delivered by the Buyer and constitutes a valid and binding obligation of the Buyer, enforceable  
9 against the Buyer in accordance with its terms.

10                   Section 4.3    Consents and Approvals; No Violations. No filing with, and no

11 permit, authorization, consent or approval of any Governmental Entity is necessary for the  
12 consummation by the Buyer of the Transactions. Neither the execution and delivery of this  
13 Agreement by the Buyer nor the consummation by it of the Transactions nor compliance by it  
14 with any of the provisions hereof will (i) conflict with or result in any breach of any provision of  
15 the certificate or articles of incorporation or by-laws of any of the Buyer, (ii) result in a violation  
16 or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give  
17 rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions  
18 or provisions of any note, bond, mortgage, indenture, contract, agreement, permit, license, lease,  
19 purchase order, sales order, arrangement or other commitment or obligation to which the Buyer  
20 is a party or by which the Buyer or any of its properties or assets may be bound or (iii) violate  
21 any order, writ, injunction, decree, statute, treaty, rule or regulation applicable to the Buyer,  
22 except in the case of clauses (ii) or (iii) for violations, breaches or defaults which would not, in  
23 the aggregate, prevent or delay the consummation of the Transactions.

24                   Section 4.4    Brokers or Finders. Neither the Buyer nor any Affiliate of the

25 Buyer has retained any agent, broker, investment banker, financial advisor or other firm or  
26 person that is or will be entitled to any broker's or finder's fee or any other commission or similar  
27 fee in connection with any of the Transactions.

28                   Section 4.5    No Litigation. As of the date hereof, there is no claim, action,

29 proceeding or, to the knowledge of the Buyer, threatened, nor is there outstanding any writ,  
30 order, decree or injunction, that (i) calls into question the authority or right of the Buyer to enter

1 into this Agreement and consummate the Transactions contemplated hereby, or (ii) would  
2 otherwise prevent or delay the transactions contemplated by this Agreement.

3 ARTICLE V  
4 COVENANTS

5 Section 5.1 INTENTIONALLY DELETED

6 Section 5.2 Access to Information. The Seller shall permit the Buyer and its  
7 respective representatives and agents to have reasonable access during normal business hours to  
8 Seller's books and records relating to the Purchased Assets and reasonable access to the  
9 Purchased Assets.

10 Section 5.3 Reasonable Efforts. Upon the terms and subject to the conditions  
11 of this Agreement, each of the parties hereto agrees to use its reasonable efforts to take, or cause  
12 to be taken, all actions, and to do, or cause to be done, all things necessary or advisable under  
13 applicable laws and regulations to consummate and make effective the Transactions as promptly  
14 as practicable, including: (i) the making of appropriate filings and such other actions reasonably  
15 necessary in connection with the application for the Final Order; and (ii) the preparation and  
16 filing of all other forms, registrations, consents and notices required to be filed to consummate  
17 the Transactions.

18 Section 5.4 Certain Payroll Withholding Matters; Employees.

19 (a) At the Buyer's request, the Seller agrees to make available to the  
20 Buyer any records relating to withholding and payment of income and unemployment taxes  
21 (federal, state, and local) and FICA taxes with respect to wages paid to employees by the Seller  
22 during the calendar year in which the Closing occurs.

23 (b) Notwithstanding anything contained herein to the contrary, the  
24 Buyer has no duty or obligation, express or implied, to hire any current or former employee of  
25 the Seller or with respect to taxes which the Seller was required to withhold from wages paid by  
26 the Seller to its current or former employees.

1                   (c) Seller shall remain liable for and shall hold the Buyer harmless  
2 from and indemnify the Buyer on the terms and subject to the conditions and limitations set forth  
3 in Article VIII hereof against any liability arising from: (i) the employment or termination of  
4 employment by the Seller of its employees; (ii) the failure by Seller to comply with the  
5 continuation health-care coverage of COBRA and Sections 601 through 608 of ERISA; (iii) any  
6 complete or partial withdrawal from any multi-employer plan that the Seller participates in that  
7 results from the consummation of the Transactions; (iv) the failure by Seller to give sufficient  
8 notice to any of its employees pursuant to WARN or other similar applicable law ; (v)  
9 remittance of funds withheld from employees on account of any federal , state or local taxes ;  
10 and (vi) federal, state and local tax filings on account of employee compensation.

11                   Section 5.5   Fees and Expenses. Except as otherwise provided in this  
12 Agreement, whether or not the Transactions are consummated, each of the Seller on the one hand  
13 and the Buyer on the other hand shall bear its own fees and expenses incurred in connection with  
14 the Transactions.

15                   Section 5.6   Publicity. Except as necessary in connection with the Seller's  
16 bankruptcy proceedings or as otherwise required by law, prior to the Closing neither the Buyer  
17 nor the Seller shall, and each of them shall cause their respective Affiliates, representatives and  
18 agents not to, issue or cause the publication of any press release or similar public announcement  
19 with respect to the Transactions without the prior consent of the other parties.

20                   Section 5.7   Submission for Court Approval. The Buyer shall cooperate with  
21 the Seller in obtaining Bankruptcy Court approval of the Agreement, and the Seller shall use its  
22 reasonable efforts to obtain such approvals and shall deliver to the Buyer copies of pleadings,  
23 motions, notices, statements, schedules, applications, reports and other papers filed with the  
24 Bankruptcy Court relating to such approvals.

25                   Section 5.8   Other Bids. The Seller shall notify the Buyer if any other bids for  
26 the Purchased Assets, or any of the Purchased Assets, are received by the Seller and shall  
27 promptly deliver to the Buyer a copy of any such written bids.

28                   Section 5.9   INTENTIONALLY DELETED



1           Section 5.10 Transfer Taxes. All excise, sales, use, transfer (including real  
2 property transfer or gains), stamp, documentary, filing, recordation and other similar taxes  
3 together with any interest in respect of such additions or penalties ("Transfer Taxes") resulting  
4 from the Transactions, if any, shall be borne by the Seller.

5           Section 5.11 Adequate Assurances. The Buyer covenants and agrees to  
6 cooperate with Seller in connection with furnishing information pertaining to the satisfaction of  
7 the requirement of adequate assurances of future performance as required under 11 U.S.C.  
8 § 365(f)(2)(B) of any and all Assumed Contracts.

9           Section 5.12 INTENTIONALLY DELETED

10          Section 5.13 INTENTIONALLY DELETED

11                           ARTICLE VI  
12                           CONDITIONS

13          Section 6.1 Conditions to Each Party's Obligations. The respective obligations  
14 of each party to effect the Transactions shall be subject to the satisfaction at or prior to the  
15 Closing of the following conditions:

16                   (a)     There shall not be in effect any statute, regulation, order, decree or  
17 judgment of any Governmental Entity which makes illegal or enjoins or prevents the  
18 consummation of the Transactions.

19                   (b)     The Bankruptcy Court shall have entered the Final Order which  
20 shall have authorized the Seller to convey to the Buyer all of its right, title and interest in and to  
21 the Purchased Assets free and clear of all Liens and the Bankruptcy Court shall have approved  
22 the assumption and the assignment of the Assumed Contracts as contemplated hereby.

23          Section 6.2 Conditions to Obligations of the Buyer. The obligation of the  
24 Buyer to effect the Transactions shall be further subject to the satisfaction at or prior to the  
25 Closing of the following conditions:

(a) The representations and warranties of the Seller set forth in Article III shall be true and correct as of the Closing Date with the same effect as though such representations and warranties had been made at and as of the Closing Date.

(b) The Seller shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing.

(c) No event or condition arising after the date hereof shall have occurred which shall have had a Material Adverse Effect.

(d) The Buyer shall have received agreement from the owners of any real property on which any of the Purchased Assets are located providing the Buyer either with the right to occupy the said real property or the right to access to the real property in either case, for at least the time which the Buyer estimates will be required to effect removal of the Purchased Assets provided, however, the Buyer shall be responsible for all administrative claims incurred by the Seller for use and occupation of such real property to the extent such use and occupation relates to the Buyers use of such real property on and after the Closing Date..

(e) Concurrently with the Seller's assumption of the Assumed Contracts pursuant to the Final Order, the Seller shall have paid one-half of the cost to cure any and all defaults existing under the Assumed Contracts (excluding Assumed Contracts which are Additional Assumed Contracts ) except for those defaults of the type described in Section 365(b)(2) of the Bankruptcy Code.

(f) The form and substance of the Final Order shall be satisfactory to Buyer.

(g) The Final Order shall have become Nonappealable.

(h) The Buyer shall have approved the form and substance of any Schedule delivered by the Seller after the execution of this Agreement

**Section 6.3 Conditions to Obligations of the Seller.** The obligation of the Seller to effect the Transactions shall be further subject to the satisfaction at or prior to the Closing of the following conditions:

(a) The representations and warranties of the Buyer set forth in Article IV shall be true and correct in all material respects as of the Closing Date with the same effect as though such representations and warranties had been made at and as of the Closing Date.

(b) The Buyer shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) The Buyer shall have paid one-half the cost to cure all defaults existing under Assumed Contracts, except for those defaults of the type described in Section 365(b)(2) of the Bankruptcy Code.

**ARTICLE VII**  
**TERMINATION AND AMENDMENT**

**Section 7.1 Termination.** This Agreement may be terminated by written notice at any time prior to the Closing by:

(a) **Mutual written consent of the Seller and the Buyer.**

(b) Either the Seller or the Buyer, if the Final Order has not been entered by the Bankruptcy Court on or before September 13, 2001 or, if the Closing shall not have occurred on or before September 14, 2001.

(c) INTENTIONALLY DELETED

(d) By the Buyer if the Seller has materially breached (provided that such breach need not be material with respect to any representation or warranty containing a materiality or similar qualification) any of Seller's representations, warranties, covenants or other terms of this Agreement, which breach has not been cured within three (3) days after written notice of such breach is received.

(e) By the Seller if the Buyer has materially breached any of Buyer's representations, warranties, covenants or other terms of this Agreement, which breach has not been cured within three (3) days after written notice of such breach is received.

1                   Section 7.2   Effect of Termination. In the event of the termination of this  
2 Agreement pursuant to Section 7.1 hereof, this Agreement shall terminate without any liability  
3 on the part of any party hereto or its affiliates, directors, officers or stockholders.

4                   Section 7.3   Amendment. This Agreement may be amended at any time by the  
5 Seller and the Buyer but only by an instrument in writing signed on behalf of each of the Seller  
6 and the Buyer.

7                   Section 7.4   Extension; Waiver. At any time prior to the Closing, each of the  
8 Seller, on the one hand, and the Buyer, on the other hand, may (i) extend the time for the  
9 performance of any of the obligations or acts of the other, (ii) waive any inaccuracies in the  
10 representations and warranties of the other contained herein or in any document delivered  
11 pursuant hereto; (iii) waive compliance with any of the agreements of the other contained herein  
12 or (iv) waive any condition to its obligations hereunder. Any agreement on the part of a party  
13 hereto to any such extension or waiver shall be valid only if set forth in a written instrument  
14 signed on behalf of such party.

15                                   ARTICLE VIII  
16                                   INDEMNIFICATION

17                   Section 8.1   Seller's Indemnity. Seller covenants and agrees to defend,  
18 indemnify and hold harmless the Buyer, its officers, directors, employees, agents, advisers,  
19 representatives and Affiliates (collectively, the "Buyer Indemnities") from and against, and pay  
20 or reimburse the Buyer Indemnities for any and all claims, liabilities, losses, costs (including  
21 reasonable attorneys' fees), or damages (collectively, "Losses") resulting from or arising out of:

22                                   (a)   any breach of any representation or warranty made by the Seller  
23 herein; provided, however, notwithstanding anything contained herein to the contrary, for  
24 purposes of determining whether a representation or warranty of Seller has been breached under  
25 this Section 8.1, such representations and warranties of Seller shall be interpreted and deemed to  
26 have been made without regard or giving effect to the knowledge, materiality, or similar  
27 qualifications therein set forth;

(b) any failure of Seller to perform any covenant or agreement or fulfill any other obligation in respect hereof;

(c) any Excluded Liabilities or Excluded Assets;

Buyer understands that Seller intends to liquidate following the Closing Date and that any claims asserted by the Buyer hereto may not be collectable to the extent the Seller is administratively insolvent at the time any such claim is asserted.

**Section 8.2 Buyer's Indemnity.** The Buyer covenants and agrees to defend, indemnify and hold harmless the Seller and its officers, directors, employees, agents, advisers, representatives and Affiliates (collectively, the "Seller Indemnities") from and against, and pay or reimburse the Seller Indemnities, for any and all Losses resulting from or arising out of:

(a) any breach of any representation or warranty made by the Buyer herein;

(b) any failure by the Buyer to perform any covenant or agreement or fulfill any other obligation in respect hereof;

(c) the Assumed Liabilities and the Buyer's Liabilities; and

(d) the Buyer's ownership, operation or use of the Purchased Assets following the Closing Date.

**Section 8.3 Procedure.** In the event that any party (the "Aggrieved") desires to make a claim for indemnification hereunder against any other party (the "Indemnitor") in connection with any action, suit, proceeding or demand at any time instituted against or made upon the Aggrieved for which the Aggrieved seeks indemnification hereunder (a "Claim"), the Aggrieved shall notify the Indemnitor of such Claim and the amount and circumstances surrounding it, and of the Aggrieved's claim of indemnification with respect thereto, provided that failure of the Aggrieved to give such notice shall only relieve the Indemnitor of its obligations under this Article VIII to the extent, if any, that the Indemnitor shall have been prejudiced thereby. If the Aggrieved is the Seller or an Affiliate of the Seller, upon receipt of such notice from the Aggrieved, the Buyer shall be entitled, at the Buyer's election, to assume or

1 participate in the defense of such Claim. In any case in which the Buyer assumes the defense of  
2 the Claim, (i) the Aggrieved shall have the right, at its expense, to engage counsel to participate  
3 in such defense, and (ii) the Buyer shall give the Aggrieved two business days notice prior to  
4 executing any settlement agreement and the Aggrieved shall have the right, in its reasonable  
5 discretion, to approve or reject the settlement; provided, however, that upon rejection of any  
6 settlement, the Aggrieved shall assume control of the defense of such Claim and the liability of  
7 the Buyer with respect to such Claim shall be limited to the amount or the monetary equivalent  
8 of the rejected settlement and related expenses. The Seller shall have no right under any  
9 circumstances, to assume defense of any claim.

## 10 ARTICLE IX

### 11 MISCELLANEOUS

12 Section 9.1 Survival. All representations and warranties of the parties  
13 contained in this Agreement, including the Schedules hereto, or any certificate delivered in  
14 connection herewith shall terminate on the Closing Date, other than representations and  
15 warranties stated in sections 3.1, 3.2, 3.4, 3.10, 3.12, 3.14(d), 3.15, 3.18 , all of which shall  
16 survive Closing , and 3.20 (to the extent applicable to any of the representations or warranties  
17 which survive Closing).

18 Section 9.2 Notices. All notices and other communications hereunder shall be  
19 in writing and shall be deemed given upon receipt if delivered personally, or when sent if mailed  
20 by registered or certified mail (return receipt requested) or transmitted by facsimile (with  
21 confirmation of transmittal) to the parties at the following addresses (or at such other address for  
22 a party as shall be specified by like notice):

23 (a) if to the Seller, to:

24 Viagate Technologies, Inc.  
25 745 Route 202/206  
26 Suite 22C  
27 Bridgewater, New Jersey 08807

28 with a copy to:

29 Markowitz Gravelle & Schwimmer  
30 3131 Princeton Pike  
31  
32

Lawrenceville, New Jersey 08648  
Facsimile: (609) 896-3184  
Attention: Christine M. Gravelle, Esquire

(b) if to the Buyer, to:

Tut Systems, Inc.  
5964 West Los Positas Boulevard  
Pleasanton, CA 94588  
Facsimile: (925) 460-3901  
Attention: Salvatore D'Auria

(c) with a copy to:

Stevens & Lee  
1818 Market Street  
29th Floor  
Philadelphia, PA 19102-1702  
Facsimile: (610) 371-7958  
Attention: Robert Lapowsky, Esquire

Section 9.3 Descriptive Headings. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 9.4 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement.

Section 9.5 Entire Agreement. This Agreement, the exhibits and schedules hereto and the related instruments constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

Section 9.6 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey, without regard to any applicable principles of conflicts of law.

Section 9.7 Specific Performance. The parties hereto agree that, if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and

1 damages would be difficult to determine, and that the parties shall be entitled to specific  
2 performance of the terms hereof, in addition to any other remedy at law or equity.

3           Section 9.8   Assignment. This Agreement may not be assigned by any party  
4 hereto without the written consent of the other parties.

5           Section 9.9   Parties in Interest. This Agreement shall be binding upon and  
6 inure solely to the benefit of the parties hereto their successors and permitted assigns, and  
7 nothing in this Agreement, express or implied, is intended to or shall confer upon any other  
8 person or persons any rights, benefits or remedies of any nature whatsoever under or by reason  
9 of this Agreement.

10           Section 9.10   Knowledge. For purposes of this Agreement, "knowledge" of the  
11 Seller shall mean the actual knowledge of the Seller's officers involved in the Transactions.

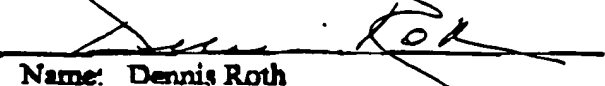
12           Section 9.11   Severability. This Agreement shall be deemed severable; the  
13 invalidity or unenforceability of any term or provision of this Agreement shall not affect the  
14 validity or enforceability of this Agreement or of any other term hereof, which shall remain in  
15 full force and effect.

16           Section 9.12   Exclusive Jurisdiction. The parties hereby agree that, without  
17 limitation of any party's right to appeal any order of the Bankruptcy Court, (a) the Bankruptcy  
18 Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any  
19 claims or disputes which may arise or result from, or be connected with this Agreement, any  
20 breach or default hereunder, or the Transactions and (b) any and all claims, actions, causes of  
21 action, suits and proceedings relating to the foregoing shall be filed and maintained only in the  
22 Bankruptcy Court, and the parties hereby consent and submit to the jurisdiction of the  
23 Bankruptcy Court and shall receive notices at such locations as indicated in Section 8.2 hereof;  
24 provided that to the extent the Bankruptcy Court determines or the parties otherwise agree that  
25 the Bankruptcy Court does not have jurisdiction, then the parties shall submit to the exclusive  
26 jurisdiction of the Federal or State courts of the State of New Jersey.



1                   IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of  
2 the date first written above.

3 VIAGATE TECHNOLOGIES, INC.

4  
5 By:   
6       Name: Dennis Roth  
7       Title: President

8  
9  
10 TUT SYSTEMS, INC.

11  
12 By:   
13       Name: Salvatore D'Auria  
14       Title: President

## Asset Purchase Agreement

### Among Tut Systems, Inc. and ViaGate Technologies, Inc.

#### **SCHEDULE 1(b) - Patents**

##### Patents:

- a. Letters Patent: None.
- b. U.S. Patent Applications:
  - 09/766,932-Customer Premises Equipment Used In Multimedia Broadband Telecommunication. (filed January 22, 2001; Y. Brian Chen, Inventor); Assigned to ViaGate Technologies, Inc.; Atty. Ref: VIA 003
  - ✓ • 09/767,000-A Local Switch For A Broadband Multimedia Telecommunications System. (filed January 22, 2001; Y. Brian Chen, Viswa Sharma, Nadine Brody, Huaiyeu Yu and Neil Weinstock, Inventors) Assigned to ViaGate Technologies, Inc.; Atty. Ref: VIA 002
  - ✓ • 09/767,016-Methods And Apparatus For Multimedia Broadband Telecommunication. (filed January 22, 2001; Y. Brian Chen, Inventor) Assigned to ViaGate Technologies, Inc.; Atty. Ref: VIA 001
- c. Non-U.S. Patent Applications: None.
- d. PCT/Other Applications: None.